

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Emergency Application of the Department of :
Transportation of the Commonwealth of :
Pennsylvania and the City of Pittsburgh for the :
Approval to Abolish the Public Above Grade : A-2024-3048837
Crossing and Remove the Bridge Carrying the :
Abandoned Cartway of Pittsburgh and West :
Virginia Railway Company (and the West Side :
Belt: Railroad Company) above S.R. 0051 in :
The City of Pittsburgh, Allegheny County and :
The Allocation of Costs Incident Thereto :

RECOMMENDED DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

This decision recommends the approval of a joint petition for a settlement which resolves remaining Commission-related issues regarding the removal of a railroad bridge. The Commission previously authorized PennDOT to remove the bridge. The settlement addresses the allocation of costs. All parties agree that the crossing no longer serves a railroad purpose, and the Commission should abolish the crossing.

HISTORY OF THE PROCEEDING

On May 2, 2024, the Pennsylvania Department of Transportation (Department or PennDOT) and the City of Pittsburgh (City) filed an “Emergency Application” for approval to abolish a public above-grade crossing and remove a bridge (Bridge) carrying the abandoned cartway of Pittsburgh & West Virginia Railway Company (Railroad) above State Route (S.R.) 51 (Application). The Application included a location map and final structure plans for the project. The Department and the City represented that due to serious structural concerns the structure was scheduled for demolition. The Commission docketed the Application at A-2024-3048837.

By letter dated May 3, 2024, the Commission’s Rail Safety Division scheduled a virtual field investigation for Tuesday May 7, 2024.

Counsel for Wabash Properties, LLC (Wabash or Wabash Properties), the adjacent property owner, entered an appearance on May 6, 2024.

Following the virtual field investigation, the Rail Safety Division referred the Application to the Office of Administrative Law Judge for an “expedited” hearing, noting the objection to the Application by Wabash Properties. By notice dated May 9, 2024, OALJ assigned the Application to Deputy Chief Administrative Law Judge Christopher Pell and scheduled a prehearing conference by telephone for May 22, 2024.

Additionally, on May 15, 2024, the Department and the City filed a Petition for Special Relief Under 66 Pa.C.S. § 2702(f) (Petition for Special Relief).¹ In the Petition for Special Relief, the Department and the City represented that the crossing had

¹ The Petition for Special Relief was filed at the same docket as the initial application.

never been formally abolished by application to the Commission. The Department and the City also represented that S.R. 51 is a principle arterial highway, connecting a multitude of very important neighborhoods as well as the Liberty Bridge and Tunnel and Fort Pitt Bridge and Tunnel. According to PennDOT, the deteriorated condition of the Bridge raised significant safety concerns to the travelling public, which may necessitate the closure of S.R. 51 if the Bridge was not promptly removed. Accordingly, the Department and the City requested that the Commission make a finding of immediate danger to the public and order the removal of the Bridge pursuant to 66 Pa.C.S. § 2702(f).

The prehearing conference before DCALJ Pell convened as scheduled on May 22, 2024. Counsel for the Department, the City, Wabash and the Railroad appeared. During the prehearing conference, the Department represented that it would be filing a petition for an interim emergency order under Section 3.6 of the Commission's regulations.²

As represented, the Department filed a Petition for Interim Emergency Relief Under 52 Pa. Code § 3.6 (3.6 Petition) on May 22, 2024. By notice dated May 22, 2024, the matter was reassigned to me. I scheduled an in-person hearing on the 3.6 Petition for June 3, 2024, in Pittsburgh and served a prehearing order on May 23, 2024.

Hearings were held on June 3, 2024, and June 4, 2024. Counsel for the Department, the City and Wabash appeared and participated. On June 6, 2024, I issued an Order Granting Interim Emergency Relief and Certifying Material Question.

On July 1, 2024, the Commission issued an Opinion and Order authorizing the demolition of the Bridge. On July 1, 2024, the Commission entered an order authorizing the City of Pittsburgh and the Pennsylvania Department of Transportation to

² 52 Pa. Code § 3.6.

remove the bridge at the above grade rail crossing above S.R. 51. That order also directed the Office of Administrative Law Judge to address the remaining issues, including the formal abolishment of the crossing and the allocation of costs pursuant to Section 2704 of the Public Utility Code.

Thereafter, Wabash Properties filed a motion requesting the Commission certify the determination for review by the Commonwealth Court, among other things. The Commission denied the request.

On September 12, 2024, Wabash Properties filed a motion for a status conference. The Commission returned the case assignment to me. A prehearing conference was scheduled for Monday, September 30, 2024. By email dated September 27, 2024, the Parties reported that they had reached an agreement to file a stipulation of settlement.

The prehearing conference was convened as scheduled. Counsel for the City, PennDOT, Wabash Properties and the Railroad appeared and participated in the conference. The parties reported that they had reached an agreement wherein they agreed, among other things, to abolish the crossing and apportion the costs between the City and PennDOT.

On November 15, 2024, the Parties filed a Joint Stipulation. The Parties also filed Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs. After a review of the proposed settlement, I contacted the Parties regarding the assignment of maintenance responsibilities for the safety features after PennDOT removed the Bridge. The Parties reported that they would confer.

On January 6, 2025, I issued an order directing a status conference which was scheduled for February 13, 2025. Counsel for all Parties appeared on February 13,

2025. The present condition of the crossing and amendments to the proposed settlement were discussed. The Parties filed an amended Joint Stipulation (Feb. 14 Stipulation) and amended Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs on February 14, 2025.

STIPULATED FACTS

The Parties stipulated the following facts in support of the settlement:

1. The construction of the Bridge was authorized pursuant to a Pennsylvania Service Commission (“PSC”) Order dated June 4, 1929 (“the 1929 Order”), upon application by the County of Allegheny County, Docket No. 20690-1929. The PSC also ratified a contract between the City and Allegheny County dated April 2, 1929.

2. On August 7, 1947, upon application by the Pittsburgh & West Virginia Railway Company, the Interstate Commerce Commission issued a certificate permitting the abandonment of the railroad line that crossed the Bridge, styled Pittsburgh & W.V. Ry. Co. Abandonment, 267 I.C.C. 814.

3. While the Pittsburgh & West Virginia Railway Company abandoned the railroad line and removed the railroad facilities crossing the Bridge more than sixty years ago, the railroad-highway crossing authorized by the 1929 Order was never formally abolished by either the PSC or its successor, the Pennsylvania Public Utility Commission (“the Commission”).

4. On October 26, 2022, the City informed Wabash that it was closing portions of the Bridge, with the intent to close the Bridge entirely and ultimately demolish it.

5. The Bridge was closed to all vehicular traffic on December 5, 2023.

6. In response to the City's expressed intent to close and demolish the Bridge, on March 1, 2023, Wabash filed a suit against the City in the Court of Common Pleas of Allegheny County (GD-23-2842) seeking, inter alia, a preliminary and then permanent injunction prohibiting the demolition of the Bridge.

7. On March 22, 2024, PennDOT was joined as a defendant in that action and the litigation was transferred to the Commonwealth Court of Pennsylvania at Docket No. 279 MD 24.

8. While that litigation was ongoing, in April 2024, the City and PennDOT negotiated the terms of a "Custom Bridge Reimbursement Grant Agreement,"³ which provided the City with federal funds, state funds, or a combination of both, for the removal of the Bridge.

9. Pursuant to the "Custom Bridge Reimbursement Grant Agreement," PennDOT would remove the superstructure, substructure, deck fill and pavement of the Bridge, leaving the Bridge's abutments in place to act as retaining walls.

10. The Agreement also provided that PennDOT would install a protective fence and safety barrier along the top of the abutments/retaining walls.

11. The demolition of the Bridge commenced on August 1, 2024, and is now complete.

³ The Custom Bridge Reimbursement Grant Agreement was filed as an exhibit to the February 14, 2025, Proposed Findings of Fact, Conclusions of Law and Agreed Order.

12. The railroad party to these proceedings, the Wheeling & Lake Erie Railway Company, is the successor in interest to the Pittsburgh & West Virginia Railway Company.

13. The Wheeling & Lake Erie Railway Company has no intention to petition the Commission for the reconstruction of a replacement railroad-highway crossing at the location of the Bridge.

TERMS OF THE SETTLEMENT

The terms of the settlement are set forth verbatim:

1. The Parties stipulate and agree that the crossing, as authorized by the 1929 Order is hereby abolished.

2. The City and PennDOT acknowledge that they do not seek allocation of costs against Wabash or the Wheeling & Lake Erie Railway Company for the demolition or removal of the Bridge as part of these PUC proceedings. For the purposes of the PUC proceedings, costs for demolition and removal of the Bridge will be borne by the City and PennDOT pursuant to the May 29, 2024, "Custom Bridge Reimbursement Grant Agreement," as amended. The PUC shall assess no such costs for demolition and removal of the Bridge to the Wheeling & Lake Erie Railway Company or Wabash. However, the City preserves all claims for relief set forth in its Counterclaim against Wabash, currently being prosecuted by the City in the Court of Common Pleas of Allegheny County and/or the Commonwealth Court of Pennsylvania, formerly at docket No. GD-23-2842 and presently pending at docket No. 279 MD 24.

3. It is the express intent of the Parties that this Stipulation does not constitute failure to exhaust any remedy, nor does it constitute a waiver of any claim or defense against any other Party in any pending or future action, and/or before any other tribunal. To that end, it is the express intent of the Parties that

the exclusive purpose of this Stipulation is to resolve the Unadjudicated Claims only. By executing this Stipulation, the Parties agree that PUC jurisdiction over all other claims between the Parties is extinguished so the Parties may pursue all claims and defenses in alternative venues before other tribunals. Contemporaneous with the execution of this Stipulation, the Parties shall file with the PUC an agreed-upon Proposed Findings of Fact, Conclusions of Law and Agreed Order to effectuate the abolishment of the crossing, allocation of costs in a manner consistent with this Stipulation and relinquishment of jurisdiction by the PUC.

4. In the interest of avoiding all doubt, those claims expressly preserved include, but are not limited to, (1) any present or future claim by Wabash brought under the Eminent Domain Code, 26 Pa.C.S. §101, et. seq. (“Eminent Domain Action”); (2) all those claims currently being prosecuted by Wabash and/or the City in the Court of Common Pleas of Allegheny County and/or the Commonwealth Court of Pennsylvania, formerly at docket No. GD-23-2842 and presently at docket No. 279 MD 24 (collectively the “Civil Litigation”). The City and PennDOT preserve all defenses to any claim brought in the Eminent Domain Action and the Civil Litigation, with the express exception that the City and PennDOT will not raise as a defense in either the Eminent Domain Action or the Civil Litigation that Wabash has failed to exhaust any remedy, statutory or common law, in those actions, due to this stipulation and/or the PUC’s Findings of Fact, Conclusions of Law and Agreed Order.

5. The Parties further stipulate and agree that the City shall bear the responsibility and cost to operate, maintain and repair the existing abutments/retaining walls, protective fences and safety barriers. However, the Parties mutually understand and agree that those operational, maintenance and repair obligations shall be subject to modification by any future adjudication of an alternative tribunal in the Eminent Domain Action or the Civil Litigation. The stipulation and agreement contained in this paragraph shall not be construed as an admission by any Party for the purposes of the Eminent Domain Action or the Civil Litigation, all claims and defenses being preserved in those proceedings.

6. The Parties enter into this Stipulation to resolve only the Unadjudicated Claims, and all other claims and/or defenses are hereby preserved. Neither this Stipulation, nor any of its terms or provisions, nor any of the negotiations connected with it shall be construed as an admission or concession by the Parties.

7. It is further understood, and agreed, that this is the complete Stipulation, and that there are no written or oral understandings, or agreements, directly, or indirectly connected with this Stipulation and settlement that are not incorporated herein. This Stipulation shall be binding upon and inure to the successors, personnel, legal or corporate representatives, officers, agents, partners, partnerships, principals, employees, attorneys, heirs and assigns of the respective Parties hereto.

8. The Parties acknowledge and agree that the provisions and language of this Stipulation have been fully negotiated, and no provision of this Stipulation will be construed in favor of any Party or against any Party by reason of such provision having been drafted on behalf of one Party rather than the other Party.

9. This Stipulation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Stipulation delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Stipulation.

10. By signing below, each Party warrants and represents that the person signing this Stipulation on its behalf has authority to bind that Party and that the Party's execution of this Stipulation is not in violation of any restrictions placed upon them by their respective entities.

11. The effective date of this Stipulation shall be the date on which the last Party executes this Stipulation by placing its signature on this Stipulation and the date of signing next to its signature. If any Party signs, but does not date, this Stipulation next to its signature, then the effective date of this Stipulation

shall be the date latest in time present next to a Party's signature (the "Effective Date").

12. This Stipulation shall be governed by and construed in accordance with internal laws of the Commonwealth of Pennsylvania, without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the Commonwealth of Pennsylvania.^[4]

DISCUSSION

Section 2702 of the Public Utility Code vests the Commission with the exclusive jurisdiction to determine the points at which, and the manner in which, rail-highway crossings are to be constructed, altered, relocated, suspended or abolished, as well as the manner and conditions under which rail-highway crossings shall be maintained, operated and protected.⁵ The Commission also has the exclusive authority to determine and order which parties should perform such work at the crossings and which parties should maintain the crossings in the future, all to effectuate the prevention of accidents and the promotion of the safety of the public.⁶

The Public Utility Code also provides the Commission with the exclusive authority to assess the costs of any work ordered to be performed upon the concerned public utilities or municipal corporations, or the Commonwealth, in such proper proportions as it may determine.⁷ In apportioning costs in rail-highway crossing cases,

⁴ Feb. 14 Stipulation, Paragraph Nos. 1-12.

⁵ 66 Pa.C.S. § 2702; *Department of Transp. v. Pa. Pub. Util. Comm'n.*, 440 A.2d 657 (Pa. Cmwlth. 1982).

⁶ 66 Pa.C.S. § 2702(b); *SEPTA v. Pa. Pub. Util. Comm'n.*, 592 A.2d 797 (Pa. Cmwlth. 1991); *see also, Pa. Game Comm'n v. Pa. Pub. Util. Comm'n.*, 651 A.2d 596 (Pa. Cmwlth. 1994) (the Commission is empowered to order the work performed upon such reasonable terms and conditions it prescribes).

⁷ 66 Pa.C.S. § 2704(a).

the Commission is not limited to any fixed rule but takes all relevant factors into consideration.⁸ The only requirement is that the Commission's Order be just and reasonable.⁹

In this case, the Commission has authorized the demolition of the Bridge. PennDOT removed the bridge pursuant to the terms of a "Custom Bridge Reimbursement Grant Agreement" between the City and PennDOT. Pursuant to the terms of the Feb. 14 Stipulation, the City and PennDOT acknowledge that they do not seek allocation of costs to Wabash or the Wheeling & Lake Erie Railway Company for the demolition or removal of the Bridge. The City has agreed to maintain and repair the existing abutments, protective fences and safety barriers.

Finally, the Railroad stipulated that service at the crossing was abandoned. The Railroad further maintains that it has no intention of reinstating rail service at the crossing. Therefore, the Railroad does not intend to seek reconstruction of the Bridge. In short, there are no further costs to allocate and there is no future use of the crossing for rail purposes.

Accordingly, there is no impediment to the formal abolishment of the crossing. The settlement terms allow the Commission to close any further issues related to the crossing but permit the Parties to pursue non-Commission legal issues in other tribunals. Therefore, I find the settlement is in the public interest and recommend that the Commission approve the settlement without modification.

⁸ *E. Rockhill Twp. v. Pa. Pub. Util. Comm'n.*, 540 A.2d 600 (Pa. Cmwlth 1988).

⁹ *Id.*

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 2702, 2704.

2. The Commission possesses exclusive authority in the Commonwealth to order the construction, alteration, protection, suspension or abolition of a rail-highway crossing, as well as the exclusive authority to determine and order which parties should perform such work at the crossing and which parties must maintain the crossing in the future, all to effectuate the prevention of accidents and promote the public safety. 66 Pa.C.S. §§ 2702, 2704.

3. The Commission possesses the exclusive authority to assess the cost of the work performed at a rail-highway crossing upon the parties concerned in such proper proportions as it may determine. 66 Pa.C.S. § 2704.

4. In terms of apportioning costs in a project altering a rail-highway crossing, the Commission is not limited to any fixed rule, but takes into consideration all relevant facts, the only requirement being that its order must be just and reasonable. *E. Rockhill Twp. v. Pa. Pa. Pub. Util. Comm'n*, 540 A.2d 600 (Pa. Cmwlth. 1988).

5. Approving the settlement which assigns costs and abolishes the crossing, as set forth in the Joint Stipulation, will serve the public interest. *Pa. Pub. Util. Comm'n v. CS Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Stipulation of Settlement of All Parties filed on February 14, 2025, be approved without modification.
2. That City of Pittsburgh at its sole cost and expense, shall maintain and repair the existing abutments/retaining walls, protective fences and safety barriers.
3. That within 30 days of the Final Order of the Commission, the City of Pittsburgh and Department of Transportation shall submit a final report detailing the removal of the Bridge, the condition of the remaining abutments/retaining walls and protective barriers to the Commission's Bureau of Rail Safety.
4. That upon satisfactory compliance with the terms of this order and any technical review by the Bureau of Rail Safety, the crossing authorized by Order of the Pennsylvania Service Commission dated June 4, 1929, Docket No. 20690-1929, shall be abolished.

5. That this order, insofar as it imposes costs on any of the parties, is without prejudice to any party's right to recover all or part of such costs incurred from others in accordance with any lawful agreement.

Date: February 25, 2025

_____/s/
Mary D Long
Administrative Law Judge